

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Policies and Rules
Governing Interstate Pay-Per-Call
and Other Information Services
Pursuant to the Telecommunications
Act of 1996

CC Docket No. 96-146

REPLY COMMENTS OF METRO ONE TELECOMMUNICATIONS, INC.

Metro One Telecommunications, Inc. ("Metro One"), by its attorney, hereby submits its reply comments in response to the Commission's request for Comments to refresh the record on its proposals to modify certain of its pay-per-call rules.¹

1. Background

Metro One is a national provider of directory assistance ("DA") and enhanced Directory Assistance ("EDA"), with both intraLATA and interLATA live operator-assisted call completion, to end-users of wireless carriers as the agent of certain wireless carriers.² Metro One also offers its services to landline-based carriers, including

¹ "The Consumer & Governmental Affairs Bureau Seeks Comment to Refresh the Record on the Commission's Rules Governing Interstate Pay-Per-Call & Other Information Services," Public Notice, 18 FCC Rcd 4942 (2003) ("Public Notice"). In the Matter of Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996; In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket Nos. 96-146, 93-22, Order and Notice of Proposed Rulemaking, 11 FCC Rcd 14738 (1996) ("Order" and "NPRM")

² Certain of the services described by AT&T Wireless in its Opening Comments are furnished to AT&T Wireless by Metro One.

competitive local exchange carriers ("CLEC's").³ Metro One's EDA services enable end-users to obtain "traditional" DA (i.e., telephone numbers of individuals and entities), as well as a host of enhanced DA ("EDA") services, which include movie listings, information on local events, reservations (such as concerts and sporting events), geographic directions, weather warnings, private directory access and school closings.

Metro One's wholly owned subsidiary, Infone LLC, has just recently commenced offering its enhanced DA service directly to the public using various 800 access numbers. Its services include a personal assistant service to handle contact data bases, calendars and personal preferences; "TeleConcierge," for making reservations and performing other concierge services; movie listings and reviews; directions and roadside assistance and, of course, directory assistance – including category and reverse searches, as well as call completion.

2. Metro One supports the AT&T Wireless Opening Comments Concerning The Applicability of The Directory Services Exemption Under Section 228 of the Communications Act.

Metro One supports the Opening Comments filed by AT&T Wireless that request clarification and confirmation of the expansive nature of directory services in the context of pay-per-call rules. In this regard, the Commission should note that it has previously found that directory assistance services include not only traditional DA but also the provision of enhanced DA which carriers such as Metro One and AT&T Wireless already provide. In its recent Notice of Proposed Rulemaking seeking to promote retail

³ Metro One is headquartered in Beaverton, Oregon and has 31 DA call centers located throughout the United States. Metro One has invested millions of dollars in its facilities and has built multiple call centers to better serve its customers (ultimately subscribers/consumers) with redundant high availability systems and operators who can provide in-depth knowledge of local information. One or more of Metro One's DA call centers are located in each of the Regional Bell Operating Company ("RBOC") operating areas.

competition in the directory assistance market,⁴ the Commission has defined⁵ and promoted the offering of a wide range of enhanced DA services. Thus, when extending the clarification requested by AT&T Wireless, the Commission should keep in mind that the broad generic term “directory services” already encompasses enhanced DA services such as the ones offered by Metro One and Infone LLC.

3. Wide Access To Directory Services Consistent With The Language of 47 U.S.C. 228 Can Be Accomplished Without Adding Further Rule Requirements.

In assuring the level playing field that the Telecommunications Act of 1996 intended in the provision of telecommunications services such as directory services, the Commission should keep in mind that not all directory service providers have a claim on 411 as the principal form of access for such services.⁶ Although this is true for wireless carriers such as AT&T Wireless and for landline LECs and CLECs, directory service providers such as Metro One subsidiary, Infone LLC, rely on retail customers accessing their service through toll free numbers such as 800 and 888 whereby the caller presubscribes to Infone LLC’s enhanced DA services, is connected to Infone LLC for free via the 800 or 888 number, and then pays for the enhanced DA services rendered by using a major commercial credit card. In this regard, Infone LLC avails itself of the alternative exemptions to certain requirements of 47 U.S.C. Section 228, the directory

⁴ In the matter of the Provision of Directory Listing Information Under the Communications Act of 1934, As Amended: The Use of N11 Codes and Other Abbreviated Dialing Arrangements, (“DLI NPRM”) FCC 01-384 released January 9, 2002 at para. 47.

⁵ “Enhanced DA services are DA services that offer additional features such as multiple listing from a single call or concierge services.”⁵

⁶ Indeed, the DLI NPRM recognizes this fact and is considering ways to promote retail competition in the delivery of DA retail services to the public. DLI NPRM at 4.

services exemption and/or the exemption for presubscription or comparable arrangements. See 47 USC 228(i)(2).⁷

In Infone LLC's case, such presubscription arrangements are performed by telephone and/or electronically via the web, generally with confirmation of the arrangement electronically transmitted over the web. In this environment, which is becoming the norm for subscribed telecommunications and other services, it would be unwise for the Commission to introduce a new requirement, not found in 47 U.S.C. 228, that presubscription or comparable arrangements must also be executed by the subscriber. In fact, such a requirement is unnecessary because state laws generally provide that such electronic agreements have the same force of law even though they are not literally "executed."

For example California Civil Code, Title 2.5 "Electronic Transactions," Section 1633.1 et seq. provides in pertinent part:

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

Section 1633.7 of the California Civil Code.

The effect of an electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

Section 1633.9 of the California Civil Code.

⁷ A further exemption to the written agreement requirement exists "for any purchase of goods and services that are not information services." 47 U.S.C. 228 (c)(8)(D)(iii).

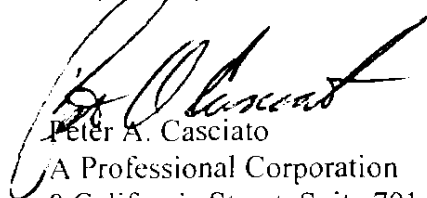
Thus, since state law already contemplates giving legal effect to electronic transactions without the incorporation of an execution requirement, the Commission need not introduce a requirement of executing presubscription or comparable arrangements.

Conclusion

The Commission should not adopt any rules that would change the exemptions under Section 228 that already apply to directory services, such as enhanced directory assistance services, whether accessed by the public on wireline or wireless networks. In addition, the Commission should not add requirements requiring that presubscription agreements or arrangements be executed in light of the statutory language contained in 47 U.S.C. Section 228 and existing state laws that protect and enforce electronic agreements and transactions.

Respectfully submitted,

May 23, 2003



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CERTIFICATE OF SERVICE

I, Chris Lucas, hereby certify that on this 27th day of May 2003, the foregoing Reply Comments of Metro One Telecommunications, Inc. were filed in paper form and electronically on the FCC's Electronic Comment Filing System and electronic copies were served via electronic mail to the following:

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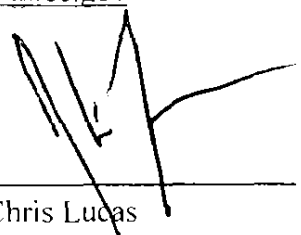
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